

**Marine Life Protection Act Initiative
Public Comments Submitted
through May 5, 2010**

From: Roberta Cordero
Sent: Friday, April 30, 2010 2:17 PM
Subject: Re: Tribal issues

Hi again,

I just got permission from Intertribal Sinkyone Wilderness Council to forward the attached doc, which is an outline of Curtis Berkey's presentation at the meeting.

see ya
R

On Fri, Apr 30, 2010 at 12:37 PM, Roberta Cordero wrote:
Hello friends,

I want to bring you up to date with what information I have concerning the April 9th Tribal/DFG meeting and related MLPAI issues. Would it be appropriate at our Sunday evening get-together to provide time for this along with Meg's and Ken's impressions, etc.? (Dinner at 7:00 p.m.)

Sonke's summary of the meeting is not quite complete (he is on vacation this week). I spoke with Becky Ota this morning and we're hoping to be able to say it will be ready to send to all participants within a few days. As this was *not* a public meeting, and was *not* an MLPAI-sponsored meeting, we need to be clear (or get clear!) on how this goes out. My understanding is that it would not be a public document. In any case, I will bring my notes--and I know Meg has some excellent notes--and we can give you an oral summary.

The Intertribal Sinkyone Wilderness Council is also developing a summary and I will find out if we can have access to it for our meeting.

I think Virginia was also approached about this, but Kaitilin Gaffney sent the ideas appended below to Meg and me this morning. I think they're good ideas and ran them by Becky and she thinks they look OK from a DFG standpoint, so I'd love to discuss whether or not we should implement this suggestion. Just got an email from Meg about this with some additional supportive ideas. (Meg, I'll leave it up to you to put those to all of us.)

And one last item, the Yurok Tribe is drafting MLPA-amendment proposed legislation vis-a-vis tribal usage and has been getting comment and input from other tribal people. If Megan Rocha gets the go-ahead from her Council, she'll be able to share that with us at the BRTF meeting.

See you in a few days, and looking forward.

Best,
Roberta

From Kaitilin Gaffney:

Dear Meg and Roberta:

Given the many challenges involved in addressing the complicated issues around tribal uses and the MLPA, it appears unreasonable to expect the RSG to address these issues in their MPA planning process. There appears to be wide spread agreement on the RSG about the importance of respecting tribal uses but the current BRTF

guidance is not sufficient to allow RSG to move beyond this issue and it continues to bog down efforts to design MPAs. We have heard from a range of interests that allowing the RSG to include broad language about respecting tribal uses and making clear that the specifics of how to address tribal uses will be handled further up the chain by DFG through a parallel process and through consultation with tribes on individual MPAs would greatly assist in RSG's ability to move forward with their charge.

The request is that the BRTF add guidance to the RSG along the lines of the following:

BRTF recommends:

(1) That during the MPA design process, the NCRSG gem groups can include specific language within descriptions of proposed MPAs regarding non-commercial tribal subsistence gathering of marine life, and spiritual, ceremonial, and traditional cultural activities;

and

(2) That DFG pursue a parallel process to investigate ways to translate allowance of tribal harvest into regulations, including engaging in site-specific consultation with individual tribes as appropriate based on final placement of proposed MPAs.

Thank you for your attention to this important issue!

Outline for Aboriginal Rights Presentation

By Curtis Berkey for

Meeting with Department of Fish and Game and Coastal Tribes

April 9, 2010

What are the fundamental principles of “black letter” Indian law:

1. Indian nations were here first and certain rights derive from that status. Aboriginal rights existed before the creation of the United States. First recognized by the US Supreme Court in 1823.
2. Aboriginal rights are inherent, not delegated or given by other governments
3. Aboriginal rights do not require governmental recognition to be enforceable

No treaty, statute, executive order required
4. Aboriginal rights apply to:

Land–Indian title
Self-government–sovereignty
Use (hunting, fishing and gathering)—either part of or separate from
5. Aboriginal rights can exist in the Tribe or in individual Tribal members
6. Established by “actual, exclusive and continuous use and occupancy for a long time.”

Exclusive use means to the exclusion of other Indian Tribes (unless two Tribes agree to jointly occupy and/or use the same area)

“Long time”—no set period of time required
Long enough for the Tribe to have transformed the area
into its domestic territory

One court has said 20 years is long enough

“Use”—actual habitation or ways of life, customs and
habits such as hunting, fishing and trading

7. Aboriginal rights can be lost in only two ways:
 - a. Act of Congress- “plain and explicit extinguishment” required
 - b. Voluntary relinquishment by treaty or affirmative abandonment

How do these principles apply in California?

1. Most all Tribes have shown or are able to show use and occupancy necessary to establish aboriginal rights to land and resources

This should be the starting point for any discussion of this issue

This does not appear to be a contested point

2. Tribes here have not voluntarily given up their aboriginal rights

Treaties negotiated and signed were not ratified, so they cannot
be the basis for cession of aboriginal rights

Unaware of any other agreements of relinquishment

3. Congress has not plainly and explicitly extinguished aboriginal title in California
4. Several other responses to assertions of aboriginal title

a. Indian Claims Commission Award and Judgment

Money awarded by lands lost in 1853 by operation of the California Land Claims Commission (failure to present claims within five years)

Even if understood to extinguish title, the decision applied only to lands within California, and three miles ocean and tidal zone (per the MLPA) was not within that area in 1853.

b. California Lands Commission of 1853

Failure to present claim extinguished title as of 1853

Applied only to titles derived from Mexican law

Aboriginal title can arise in subsequent years even if Commission extinguished titles in 1853 (Cramer v. United States, 1923 California case)

Did not extinguish individual aboriginal titles

c. Creation of National Forests

Leading case on this issue was based on a stipulation that a taking of the Indian title had occurred

There are no cases holding that creation of national forests alone is sufficient to extinguish aboriginal title

Conclusion:

Question of aboriginal title requires individualized analysis of facts and law applicable to specific Tribes and their unique histories and experiences.

April 30, 2010

Blue Ribbon Task Force
Marine Life Protection Act Initiative
c/o California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: Marine Life Protection Act (MLPA) Initiative Science Guidelines

Dear MLPA Initiative Blue Ribbon Task Force Members,

During the Regional Stakeholder Group planning process it has been repeatedly stated that we "need" to meet the science guidelines. This is leading many stakeholders to believe that their involvement in the process has no utility. Indeed, if there is a predetermined outcome to fully meet the science guidelines, then the current level of stakeholder involvement is unnecessary. There are a limited number of marine protected area (MPA) array designs that meet the science guidelines. Assuming that the science guidelines must be met, MLPA Initiative staff could identify the different options which meet the guidelines, and with stakeholder input the Blue Ribbon Task Force could pick among those options. There would be no need for the extensive stakeholder deliberations that are currently occurring.

However, when the guidelines were adopted, the Science Advisory Team (SAT) did not have the habitat or socioeconomic data we have now. Furthermore, the SAT does not have the local knowledge brought to this process by the Regional Stakeholder Group. Hence, when the SAT adopted the science guidelines, they could not adequately assess the socioeconomic or ecological consequences that would result by meeting the guidelines. Furthermore, because the North Coast science guidelines are the same as used in the South Coast, it is apparent that the guidelines do not account for local ecological, physical or socioeconomic conditions. This is not necessarily a problem, as long as we recognize that the science guidelines are *guidelines* and not *rules*.

As has been recognized by MLPA Initiative staff, the North Coast is a unique area. There is more than one way to meet the goals of the MLPA and I am hopeful that the MLPA Initiative is willing to work with local communities to meet MLPA goals in a way that is sensitive to local conditions and desires. This will not be achieved if the science guidelines are treated like rules and we fail to recognize the unique features of the North Coast. I urge other stakeholders and all MLPA Initiative participants to be open minded as we explore the best way to meet the goals of the MLPA.

Sincerely,



Adam Wagschal
Regional Stakeholder Group Member

From: Tim
Sent: Tuesday, May 04, 2010 8:18 AM
To: MLPAComments
Subject: North Coast fishing regulations

One thing that the SAT has made abundantly clear is that good fishery management is at least as important if not more important than Marine Reserves for managing fish stocks. The North Coast has the most restrictive regulations on the entire West Coast. A 3 month season in Shelter Cove compared to 10 months in Southern Cal and a year round season in Oregon. This is not because of a lack of abundance in fish stocks but just the opposite. Yelloweye rockfish have been declared "overfished" on the entire West Coast by the PFMCI, the federal body that regulates fisheries on the West Coast. Yelloweye are not allowed to be retained anywhere off of the continental west coast. However, there is still a "quota " for yelloweye to account for released fish that may die after being caught (release mortality) accidentally while fishing for other more abundant species. Because of the abundance of yelloweye in Northern California, especially around Shelter Cove and Punta Gorda, Northern California reaches its "quota" in 3 to four months while Oregon does not reach its "quota" in a year. So Northern California usually does not come close to catching its quota of other more abundant species like ling cod. Because of their long life span and the age at which they reach breeding maturity yelloweye rockfish are not expected to reach rebuilt status for about 50 years. The good news is that they are rebuilding as evidenced by the stock assesment completed last year. Because of the strict regulations in Northern California other species are being fished at such low levels that the stocks are incredibly healthy. In fact, California Fish and Game is currently trying to figure the best way to increase the limit on ling cod while not affecting the rebuilding timeline for yelloweye rockfish. Tim Klassen

From: Tom Meredith
Sent: Tuesday, May 04, 2010 5:47 AM
To: MLPAComments
Subject: MLPA

To Whom it May Concern,

I am planning a trip down the California coast by boat. I was planning to spend up to 5 months transiting the area, and enjoying the local culture, and attractions. As a fisherman that enjoys keeping only what can be eaten fresh that day, my plans have changed. We will probably spend some \$50,000 LESS than originally planned, just in marina, and docking fees. The effect on local shops, grocery, car rental....the list goes on and on. This is a small impact in the grand scheme of things. I fear that I am not the only yachtsman changing their travel plans because of this legislation. My plans to purchase property, and make San Diego a second base of operations are definitely out.

I thought you should be aware of one individuals impact on the State's economy. I fear your local impact from residents, combined with tourist dollars, will make for a very negative economic result. I do not claim to be a scientist, but as a lifelong boater and fisherman, I have found that the fisherman, not the scientists, have a much better idea of species populations and distribution. You should consider listening more carefully to the people in the field, than the scientist behind the desk who is being pressured by political forces.

Sincerely,

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